

ONE HUNDRED SIXTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

32

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

January 24, 2018

The Honorable Ajit V. Pai  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Pai:

Pursuant to Rules X and XI of the U.S. House of Representatives, we write to request information about what communications, if any, took place between the Federal Communications Commission (FCC) and FCC licensees, relating to the legal challenge and potential legal challenges of the FCC's *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* Declaratory Ruling and Third Report and Order (Order).<sup>1</sup>

It has come to our attention that certain individuals at the FCC may have urged companies to challenge the Order the Commission adopted in order to game the judicial lottery procedure and intimidated the agency would look unfavorably towards entities that were not helpful. If true, it would be inappropriate for the FCC to leverage its power as a regulator to influence regulated companies to further its agenda in seeking a more friendly court. To date, four FCC licensees have petitioned the federal judiciary for review of the Order in separate filings and in separate circuits.<sup>2</sup> These cases—along with challenges filed in the Ninth Circuit by

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<sup>1</sup> Federal Communications Commission, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket 17-79 and WC Docket 17-84, Declaratory Ruling and Third Report and Order (Sept. 27, 2018).

<sup>2</sup> *AT&T Services, Inc. v. Federal Communications Commission and the United States of America*, AT&T's Petition for Review, U.S. Ct. of Appeals for the D.C. Circuit, No. 18-1294 (filed Oct. 25, 2018); *Verizon v. Federal Communications Commission and the United States of America*, Verizon's Petition for Review, U.S. Ct. of Appeals for the Second Circuit, No. 18-3255 (filed Oct. 25, 2018); *Sprint v. Federal Communications Commission and the United States of*

cities and municipalities—were initially transferred to the Tenth Circuit Court of Appeals, after a lottery conducted under the Multidistrict Litigation rules.<sup>3</sup> On motion from the cities and municipalities, the cases have been transferred back to the Ninth Circuit.<sup>4</sup>

To help further in our inquiry, we request that you provide answers to the following questions and provide the requested documents within three weeks of the FCC receiving normal operational funding:

1. Did the FCC have communications with an FCC licensee relating to the legal challenges or potential legal challenges of the Order?
2. If so, identify every person(s) and/or FCC employee(s) involved in the communication(s), describe in detail the communication(s), and provide all documents in your possession, custody, or control relating to such communication(s).
3. Did any person at the FCC and/or FCC employee urge an FCC licensee to challenge the Order?
4. To the extent that an FCC licensee refused to challenge the Order, has any person at the FCC and/or FCC employee threatened or taken adverse action against such FCC licensee, including but not limited to delaying consideration of items or issue of interest to such person?

In addition to following the instructions provided in the attached document, in responding to this and all requests from the Committee, do not limit your search to documents and communications maintained in the accounts and files of individual FCC personnel. Your search should include all documents and communications maintained or stored anywhere in the FCC's information systems. As part of your response please include a description of the method and process you followed to conduct the search including the terms, date ranges, and other parameters you used to collect responsive information and a list of all the FCC information systems you searched.

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*America*, Sprint's Petition for Review, U.S. Ct. of Appeals for the Tenth Circuit, 18-9563 (filed Oct. 25, 2018); *Puerto Rico Telephone Company v. Federal Communications Commission and the United States of America*, Puerto Rico Telephone Company's Petition for Review, U.S. Ct. of Appeals for the First Circuit, No. 18-2063 (filed Oct. 25, 2018).

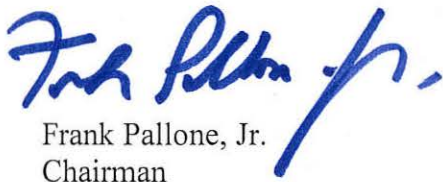
<sup>3</sup> In re Federal Communications Commission, In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, FCC 18-133, Released Sept. 27, 2018, United States Judicial Panel on Multidistrict Litigation, Consolidation Order, MCP No. 155 (Nov. 13, 2018).

<sup>4</sup> *Challenge to FCC's 5G Network Order Moves to Ninth Circuit (2)*, BNA (Jan. 11, 2019) ([www.bna.com/challenge-fccs-5g-n57982095306/](http://www.bna.com/challenge-fccs-5g-n57982095306/)).


In addition to FCC information systems, your search should include any other information systems of applications that may contain information related to this request, including personal phone records, non-government e-mail accounts, SMS-based text messages, direct communications sent or received through social media applications, or other electronic communications services. As part of your response, please provide a list of the person(s)—including FCC employee(s)—whose non-FCC accounts were searched..

An attachment to this letter provides additional specific instructions and definitions for responding to the Committee's requests. Thank you for your attention to this important matter. If you have any questions, please contact Gerald Leverich of the Committee Staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.  
Chairman



Mike Doyle  
Chairman  
Subcommittee on Communications  
and Technology

**Responding to Document Requests from the  
Committee on Energy and Commerce**

In responding to the document request from the Committee on Energy and Commerce, please apply the instructions and definitions set forth below.

Instructions

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
5. Documents produced in electronic format should also be organized, identified, and indexed electronically. Documents produced in an electronic format should also be produced in a searchable format.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.
8. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
9. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.



10. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.
11. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (8) and (9) above.
12. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2017 to the present.
16. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
17. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
18. All documents should be bates-stamped sequentially and produced sequentially.
19. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 316 of the Ford House Office Building, and the minority set should be delivered to the minority staff in Room

564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.

20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

## **Definitions**

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, email (desktop or mobile device), text message, instant message, MMS or SMS message, or otherwise.
4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or

other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
7. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
8. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.
9. The term "FCC Licensee" means a company licensed by the FCC, including but not limited to those licensed to provide wireline or wireless telecommunications, broadband internet access, cable, satellite, or any other FCC licensed service and includes the subdivisions, subsidiaries, entities, affiliates, officials, officers, administrators, employees, attorneys, advisors, consultants, staff, or any other persons acting on behalf of or under the control or direction of such licensee
10. The term "Federal Communications Commission" includes all of the FCC's offices, subdivisions, entities, officials, officers, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf of or under the control or direction of the Federal Communications Commission.





Federal Communications Commission  
Office of Legislative Affairs  
Washington, D.C. 20554

Office of the Director

February 19, 2019

The Honorable Frank Pallone, Jr.  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Pallone:

Thank you for your letter regarding the *Wireless Infrastructure Order*, which was released by the FCC on September 27, 2018 and summarized in the Federal Register on October 15, 2018.<sup>1</sup> The action taken by the FCC in the *Wireless Infrastructure Order* was informed by a wide range of stakeholders and represents a reasoned, well-balanced approach to wireless infrastructure deployment that will enable the United States to realize the benefits of 5G technology more expeditiously, thereby improving the lives of all American consumers.

While the Commission firmly believes the *Wireless Infrastructure Order* properly addresses a critical public policy need and is legally sound, section 402 of the Communications Act of 1934, as amended, allows parties alleging to be aggrieved by an FCC order to petition a federal appeals court to review an order issued by the FCC.<sup>2</sup> In instances in which petitions for review are filed in multiple courts of appeals and received by the FCC within ten days, 28 U.S.C. § 2112(a) stipulates that the Judicial Panel on Multidistrict Litigation conducts a random selection to determine the circuit court in which the petitions should be consolidated and heard. With respect to the *Wireless Infrastructure Order*, qualifying petitions for review were filed in the First, Second, Ninth, and Tenth Circuit Courts of Appeals, with the last being randomly selected as the circuit court to hear the consolidated petitions.<sup>3</sup> On motion, however, the consolidated petitions were subsequently transferred to the Ninth Circuit Court of Appeals.<sup>4</sup>

In your January 24, 2019 letter, you asked whether the FCC communicated with any licensee related to challenges to the *Wireless Infrastructure Order*. Chairman Pai has informed me that neither he nor his staff urged any FCC licensee to challenge the *Wireless Infrastructure Order*, nor did they make any threats, implied or otherwise, against any licensee regarding such challenges. And as indicated in the attached documents, the Office of General Counsel only had standard communications with litigants related to its role in collecting petitions for review for transmission to the Judicial Panel on Multidistrict Litigation. As you know, this is a multi-member agency, and Chairman Pai cannot speak on behalf of his colleagues.

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<sup>1</sup> See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Declaratory Ruling and Third Report and Order, FCC 18-133 (Sept. 27, 2018).

<sup>2</sup> See 47 U.S.C. § 402; see also 28 U.S.C. § 2342(1) and 28 U.S.C. § 2344.

<sup>3</sup> See Consolidation Order, MCP No. 155 (J.P.M.L. Nov. 2, 2018).

<sup>4</sup> See Order, No. 18-9563 (10th Cir. Jan. 10, 2019).



Federal Communications Commission  
Office of Legislative Affairs  
Washington, D.C. 20554

Office of the Director

Enclosed you will find correspondence between FCC employees and FCC licensees with respect to the legal challenges to the *Wireless Infrastructure Order*. The documents responsive to your request were collected following a search overseen by the Commission's Office of General Counsel. To date, Commissioner Rosenworcel's Office has indicated it is continuing to work on its response to the Office of General Counsel's request; as such, this correspondence does not include the responsive documents, if any, that are in the possession of Commissioner Rosenworcel or her staff.

The Commission appreciates your interest in this matter, and it looks forward to working with you and the Committee to make widespread deployment of next generation wireless technology a reality for American consumers. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, which appears to read "Timothy B. Strachan", is written over a horizontal line.

Timothy B. Strachan  
Director, Office of Legislative Affairs

Enclosure



Federal Communications Commission  
Office of Legislative Affairs  
Washington, D.C. 20554

Office of the Director

February 19, 2019

The Honorable Mike Doyle  
Chairman  
Subcommittee on Communications and Technology  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

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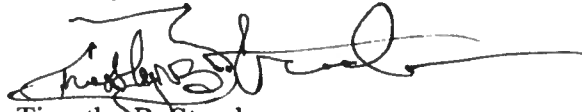
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Sincerely,

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Timothy B. Strachan,  
Director